

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FRED LOCKLARY,

08 CIV. 0079

Plaintiff,

-against-

TOWN OF NEW WINDSOR, MICHAEL C.
BIASOTTI, Chief of Police of the Town of New
Windsor Police Department, POLICE OFFICER
STEPHEN L. BEREAN (Shield #132) and POLICE
OFFICER JOHN A. MARTIN (Shield #124),

VERIFIED ANSWER

Hon. William C. Conner

Defendants.

Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), through their attorneys, Barry, McTiernan & Moore, answering the Complaint of the Plaintiff, states as follows:

PRELIMINARY STATEMENT

1. Denies each and every allegation contained in paragraphs "1" and "2" of the Complaint.

JURISDICTION

2. Denies each and every allegation contained in paragraphs "3" and "4" of the Complaint, and respectfully refer all questions of law to this Honorable Court.

PARTIES

3. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "5" and "9" of the Complaint.

4. Admits each and every allegation contained in paragraphs "6", "7" and "8" of the Complaint.

5. Denies each and every allegation contained in paragraph "10" of the Complaint, and respectfully refer all questions of law to this Honorable Court.

NOTICE OF CLAIM

6. Denies each and every allegation contained in paragraph "11" of the Complaint, but admits service of a Notice of Claim, and respectfully refer all questions of law to this Honorable Court.

FACTUAL ALLEGATIONS

7. Denies each and every allegation contained in paragraphs "12", "33" and "39" of the Complaint, and respectfully refer all questions of law to this Honorable Court.

8. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "13" and "22" of the Complaint.

9. Denies each and every allegation contained in paragraphs "14", "16", "18", "19", "20", "21", "24", "25", "26", "27", "28", "29", "30", "31", "34", "35", "40" and "41" of the Complaint.

10. Denies in the form alleged each and every allegation contained in paragraph "15" of the Complaint, except admits that Berean requested identity of driver.

11. Denies in the form alleged each and every allegation contained in paragraph "17" of the Complaint, except admits that both officers were present.

12. Admits each and every allegation contained in paragraphs "23", "32", "36" and "38" of the Complaint.

13. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "37" of the Complaint, and respectfully refer all questions of law to this Honorable Court.

FIRST COUNT
(42 U.S.C. SECTIONS 1981, 1983 AND 1985
AGAINST INDIVIDUAL DEFENDANTS

14. Answering paragraph numbered "42" of the Complaint, Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN

A. MARTIN (Shield #124), repeats, reiterates and realleges each and every response contained in paragraphs "1" through "13" of this Verified Answer to the Complaint.

15. Denies each and every allegation contained in paragraph "43" of the Complaint.

16. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "44" of the Complaint.

SECOND COUNT
(ASSAULT AGAINST INDIVIDUAL DEFENDANTS)

17. Answering paragraph numbered "45" of the Complaint, Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), repeats, reiterates and realleges each and every response contained in paragraphs "1" through "16" of this Verified Answer to the Complaint.

18. Denies each and every allegation contained in paragraph "46" of the Complaint.

19. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "47" of the Complaint.

SECOND COUNT
(BATTERY)

20. Answering paragraph numbered "48" of the Complaint, Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), repeats, reiterates and realleges each and every response contained in paragraphs "1" through "19" of this Verified Answer to the Complaint.

21. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "49" and "50" of the Complaint.

THIRD COUNT
(MALICIOUS PROSECUTION
AGAINST INDIVIDUAL DEFENDANTS)

22. Answering paragraph numbered "51" of the Complaint, Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), repeats, reiterates and realleges each and every response contained in paragraphs "1" through "21" of this Verified Answer to the Complaint.

23. Denies each and every allegation contained in paragraph "52" of the Complaint.

24. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "53" of the Complaint.

FOURTH COUNT
(FALSE ARREST & IMPRISONMENT
AGAINST INDIVIDUAL DEFENDANTS)

25. Answering paragraph numbered "54" of the Complaint, Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), repeats, reiterates and realleges each and every response contained in paragraphs "1" through "24" of this Verified Answer to the Complaint.

26. Denies each and every allegation contained in paragraph "55" of the Complaint.

27. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "56" of the Complaint.

FIFTH COUNT
(MUNICIPAL LIABILITY AGAINST DEFENDANT
TOWN AND BIASOTTI – RESPONDENT SUPERIOR)

28. Answering paragraph numbered "57" of the Complaint, Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police

Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), repeats, reiterates and realleges each and every response contained in paragraphs "1" through "27" of this Verified Answer to the Complaint.

29. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "58" of the Complaint, and respectfully refer all questions of law to this Honorable Court.

30. Denies each and every allegation contained in paragraph "59" of the Complaint.

31. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "60" of the Complaint.

SIXTH COUNT
(MUNICIPAL LIABILITY AGAINST DEFENDANT
TOWN AND BIASOTTI – 42 U.S.C. §1983)

32. Answering paragraph numbered "61" of the Complaint, Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), repeats, reiterates and realleges each and every response contained in paragraphs "1" through "31" of this Verified Answer to the Complaint.

33. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "62" of the Complaint.

34. Denies each and every allegation contained in paragraphs "63", "64", "65", "66", "67" and "68" of the Complaint.

AS AND FOR A FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANTS,
TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New
Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and
POLICE OFFICER JOHN A. MARTIN (Shield #124),
ALLEGGE THE FOLLOWING,
UPON INFORMATION AND BELIEF:

35. The personal injuries alleged to have been sustained by the Plaintiff were caused entirely or in part as a result of the culpable conduct attributable to the Plaintiff, and the Defendant seeks a dismissal or reduction in any recovery had by Plaintiff in the proportion which the culpable conduct attributable to the Plaintiff bears to the culpable conduct which caused the damages.

**AS AND FOR A SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANTS,**

**TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New
Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and
POLICE OFFICER JOHN A. MARTIN (Shield #124),**

**ALLEGES THE FOLLOWING,
UPON INFORMATION AND BELIEF:**

36. Should the plaintiff seek to recover for the cost of medical care, loss of earnings or other economic loss such amounts must be reduced pursuant to CPLR Section 4545(c) to the extent that such amounts will or have been replaced or indemnified in whole or in part from collateral sources.

**AS AND FOR A THIRD SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANTS,**

**TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New
Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and
POLICE OFFICER JOHN A. MARTIN (Shield #124),**

**ALLEGES THE FOLLOWING,
UPON INFORMATION AND BELIEF:**

37. Plaintiff's Second Count (Assault Against Individual Defendants), contained in paragraphs 45, 46 and 47 of plaintiff's Complaint is barred by the applicable statute of limitations. The plaintiff's "Second Count Battery" contained in paragraphs 48, 49 and 50 of the Complaint is barred by the applicable statute of limitations. The plaintiff's Fourth Court contained in paragraphs 54, 55 and 56 of the Complaint are barred by the statute of limitations. The plaintiff's Fifth Count (Municipal Liability Against Defendant, Town and Biasotti Respondeat Superior) contained in paragraphs 57, 58, 59 and 60 of the Complaint is barred by the applicable statute of limitations.

AS AND FOR A FOURTH SEPARATE AND COMPLETE**AFFIRMATIVE DEFENSE, DEFENDANTS,**

TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124),

ALLEGED THE FOLLOWING,**UPON INFORMATION AND BELIEF:**

38. That at all times relevant to the acts alleged in the Complaint the Town of New Windsor, and its employees, agents, servants acted reasonably, properly, lawfully and in good faith.

AS AND FOR A FIFTH SEPARATE AND COMPLETE**AFFIRMATIVE DEFENSE, DEFENDANTS,**

TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124),

ALLEGED THE FOLLOWING,**UPON INFORMATION AND BELIEF:**

39. Defendants are immune from liability pursuant to the doctrine of qualified immunity.

WHEREFORE, Defendant, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), demands judgment dismissing the Complaint of the Plaintiff herein as to said Defendant, together with the costs, fees, and disbursements of this action.

Dated: White Plains, New York
January 25, 2008

Yours, etc.,



Robert C. McMahon (RM1533)

Barry, McTiernan & Moore

Attorneys for Defendants

TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124)

55 Church Street
White Plains, NY 10601
(914) 946-1030

To:

Michael R. Scolnick, P.C.

Attorneys for Plaintiff

FRED LOCKLARY

175 Burrows Lane

Blauvelt, NY 10913

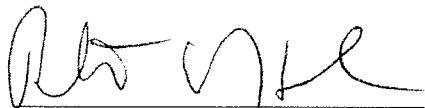
(845) 354-9339

Robert C. McMahon, being an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

I am associated with the law firm of Barry, McTiernan & Moore, attorneys for the Defendants, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), herein. I have read the Answer, know the contents thereof and that the same is true to my knowledge. I further state that the sources of my information and the grounds of my belief as to all the matters therein not stated upon my knowledge is based upon materials in the file, investigations, reports and documents contained in the file, and information received by myself in the course of duties as an attorney for the Defendant.

I further state that the reason this verification is made by me and not by the answering Defendant is that I am in possession of material information on which this action is based.

Dated: White Plains, New York
January 25, 2008



Robert C. McMahon

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

LORI JACOBSON, being duly sworn, deposes and says: I am not a party to this action, am over 18 years of age and reside in Yonkers, New York.

That on January 29, 2008, a true copy of the annexed **Verified Answer** was served in the following manner:

By mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Michael R. Scolnick, P.C.
Attorneys for Plaintiff
FRED LOCKLARY
175 Burrows Lane
Blauvelt, NY 10913
(845) 354-9339

Lori Jacobson
Lori Jacobson

Sworn to before me this
29th day of January, 2008

Robert C. McMahon

Robert C. McMahon
Notary Public, State of New York
No. 4723783
Qualified in Westchester County
Commission Expires: February 3, 2011